



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 19, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding via personal delivery. The landlord provided a Proof of Service document indicating that the tenant was served at the rental unit at 8:00 pm. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on July 30, 2007, indicating a monthly rent of \$400.00 due the first of each month and that a deposit of \$200.00 was paid on July 30, 2007 and a copy of a printout indicating security deposit payment on August 1, 2007;

- An copy of an undated notice indicating rent due dates and late payment and NSF fees;
- A copy of a tenant ledger to November 6, 2009 and a tenant abstract report; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 4, 2009 with a stated effective vacancy date of November 14, 2009, for \$995.00 in unpaid rent and \$25.00 in fees.

Documentary evidence filed by the landlord indicates that the tenant paid for October and November rent by cheque and that each cheque was non-negotiable. The landlord has claimed NSF fees of \$45.00 and \$25.00 late fees for each cheque. The Notice indicates that the tenant failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door of the rental unit on November 4, 2009 at 5:45 pm with a witness present. The Act deems the tenant was served on November 7, 2009.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenant on November 7, 2009.

I accept the evidence before me that the tenant has failed to pay the rent owed in full with in the 5 days granted under section 46 (4) of the *Act*. However, the landlord has not provided evidence of rent increases given as required by Part 3 of the *Act*; therefore, I find that the landlord is entitled to compensation in the sum of \$400.00 per month.

Section 53(2) of the *Act* provides:

If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Therefore, the effective date of the Notice is changed to November 17, 2009.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice; November 17, 2009.

I note that the landlord has included a claim for late fees. The tenancy agreement indicates fees of \$20.00 for late and NSF fees; which take precedence over any attempted increase in fees charged. It also appears the landlord has included fees in the amount of rent owed on the Notice to end tenancy. The landlord has not provided

evidence of any NSF fees charged by the bank. Further; compensation for fees are not considered via the Direct Request Proceeding process; therefore I dismiss with leave to reapply the claim for fees as contained in the tenancy agreement signed between the parties.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent in the sum of \$400.00 for each October and November 2009, and the application fee cost.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$850.00** comprised of \$800.00 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$204.29 in partial satisfaction of the claim and grant an Order for the balance due of **\$645.71**. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The landlord's claim for fees is dismissed with leave to reapply.

The balance of unpaid rent claimed by the landlord is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 04, 2009.

Dispute Resolution Officer